## IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH, CENTRAL DIVISION

CHRISTIAN NADAL and ROBBIE
BASCUE,

Plaintiffs,

v.

MEMORANDUM DECISION AND
ORDER DENYING [7] MOTION FOR
EXTENSION OF TIME

Case No. 4:18-cv-00001-DN

UNITED STATES OF AMERICA,

Defendant.

District Judge David Nuffer

Plaintiffs seek an extension of time to serve Defendant in this matter.<sup>1</sup> As part of their Motion, Plaintiffs attach waivers of service that were purportedly mailed to the U.S. Attorney General and U.S. Attorney General for the District of Utah.<sup>2</sup> These waivers have not been executed and to date, proof of service by a method allowed under Rule 4 of the Federal Rules of Civil Procedure has not been filed.<sup>3</sup>

Plaintiffs' Motion is procedurally improper. This case was dismissed without prejudice on September 5, 2018 and the case is closed.<sup>4</sup> In a prior response, Plaintiffs assert that they believed the federal court was the defendant and therefore, service was either not required or accomplished by filing their complaint.<sup>5</sup> Plaintiffs make other arguments, including allegations that the President of the United States, U.S. Attorney, and Clerk of the Court were aware of

 $^3$  *Id*.

<sup>&</sup>lt;sup>1</sup> Notice of Service of Complaint Notice of Service of Waiver of Service of Summons ("Motion"), <u>docket no. 7</u>, filed Sept. 24, 2018.

 $<sup>^{2}</sup>$  Id.

<sup>&</sup>lt;sup>4</sup> Order Dismissing Case Without Prejudice, docket no. 5, entered Sept. 5, 2018.

<sup>&</sup>lt;sup>5</sup> Response to Court Order Dismissing Case Without Prejudice Motion – Defendants Have Been Served ("Response"), <u>docket no. 6</u>, filed Sept. 13, 2018.

issues raised in the complaint based upon correspondence sent before this case was initiated and after. Petitioners assert that the case should be reinstated and the time for service extended due to "their lack of knowledge of the Court Rules." None of these arguments is a basis for reinstating the case. "A document filed *pro se* is 'to be liberally construed[.]" However, it is not the proper function of the district court to act as an advocate for a pro se litigant. "[The Tenth Circuit] has repeatedly insisted that 'pro se litigants follow the same rules of procedure that govern other litigants." This includes Rule 4 governing service.

IT IS HEREBY ORDERED that Plaintiffs' Motion<sup>11</sup> is DENIED. Notably Plaintiffs are not without recourse. Plaintiffs' action was dismissed without prejudice. They are free to re-file their complaint, pay the filing fee, and comply with the Federal Rules of Civil Procedure in the newly initiated proceeding.

Dated September 28, 2018.

BY THE COURT:

David Nuffer

United States District Judge

<sup>&</sup>lt;sup>6</sup> Response at 1-3, <u>docket no. 6</u>.

<sup>&</sup>lt;sup>7</sup> Motion at 2, docket no. 7.

<sup>&</sup>lt;sup>8</sup> Erickson v. Pardus, 551 U.S. 89, 94 (2007) (citing Estelle v. Gamble, 429 U.S. 97, 106 (1976)).

<sup>&</sup>lt;sup>9</sup> Hall v. Bellmon, 935 F.2d 1106, 1110 (10th Cir. 1991).

<sup>&</sup>lt;sup>10</sup> Nielsen v. Price, 17 F.3d 1276, 1277 (10th Cir. 1994).

<sup>&</sup>lt;sup>11</sup> *Id*.